



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
VIRGINIA-CAROLINA FARM ASSOCIATES, L.C.
FOR
Crittenden Road Mine
VPDES Permit No. VAG84
Storm Water Registration No. VAG840185**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and VIRGINIA-CAROLINA FARM ASSOCIATES, L.C., regarding the Crittenden Road Mine, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit or regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means the discharge of a pollutant.
 5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft, which is being used as a means of transportation.
 6. "Facility" means the Crittenden Road Mine located at 7725 Crittenden Road in Suffolk, Virginia, from which discharges of stormwater associated with industrial activity occur.
 7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
 8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
 9. "Permit" means VPDES General Permit No. VAG84, which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019. Virginia-Carolina applied for registration under the Permit and was issued Registration No. VAG840185 on July 1, 2014.
 10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
 11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
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12. "Regulation" means Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Non-Metallic Mineral Mining, 9 VAC 25-190, *et seq.*
13. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
14. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
15. "SWPPP" means Stormwater Pollution Prevention Plan.
16. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
17. "VAC" means the Virginia Administrative Code.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "Virginia-Carolina" means VIRGINIA-CAROLINA FARM ASSOCIATES, L.C., a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Virginia-Carolina is a "person" within the meaning of Va. Code § 62.1-44.3.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Virginia-Carolina owns and operates the Facility, a sand and fill mineral mine, located at 7725 Crittenden Mine Road in Suffolk, Virginia, which discharges stormwater associated with industrial activity.
 2. The Permit allows Virginia-Carolina to discharge stormwater associated with industrial activity from Outfall 001 of the Facility to an unnamed tributary that leads to Campbell Creek and then to the Nansemond River, in strict compliance with the terms and conditions of the Permit.
 3. The Nansemond River is located in the James River Basin. The Nansemond River and Campbell Creek are listed as impaired for dissolved oxygen, PCB in fish tissue, and aquatic plants. Among the sources of impairment are industrial point source discharges.
 4. Part I.A.1 of the Permit authorizes Virginia-Carolina to discharge process wastewater and commingled stormwater associated with industrial activity from Outfall 001.
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5. Part I.B.6 of the Permit provides that except as expressly authorized, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.
 6. During a DEQ facility inspection on July 6, 2016, DEQ staff documented the following compliance deficiencies with respect to the Permit:
 - a. Virginia-Carolina was discharging from two unpermitted locations:
 - i. Water overflowed from the berm area near the southwestern corner of the Facility and discharged to a spring south of the pit;
 - ii. Water discharged from a pipe going through the berm on the south side of the property, east of the berm overflow, with the effluent end of the pipe found with a buildup of solids and the discharge flow pattern to the creek.
 7. Virginia-Carolina is required to develop and implement a Facility SWPPP according to requirements outlined in Part II of the Permit.
 8. Part II.F.1 of the Permit requires that the Facility SWPPP be signed and retained onsite.
 9. Part II.G.3 of the Permit requires Virginia-Carolina to review and amend the SWPPP whenever inspections determine that modifications to the SWPPP are necessary.
 10. Part II.H.2.a.(1) of the Permit requires that the SWPPP include a site map documenting each existing structural control measure to reduce pollutants in stormwater run-off, locations where materials are exposed to precipitation, and type of discharges.
 11. Part II.H.2.a.(2) of the Permit requires that the SWPPP include a site map documenting the location of stormwater conveyances.
 12. Part II.H.3.d.(2) of the Permit provides that the inspection frequency of the Facility shall be specified in the SWPPP based on the level of industrial activity at the Facility, but shall be a minimum of quarterly.
 13. Part II.H.3.d.(4) of the Permit requires that the results for routine Facility inspections be documented and maintained onsite with the SWPPP.
 14. During the DEQ Facility inspection on July 6, 2016, DEQ staff documented compliance deficiencies with respect to the SWPPP requirements of the Permit, including the following:
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- a. The Facility SWPPP had not been signed as required.
 - b. The Facility SWPPP had not been reviewed and amended as determined necessary in a June 2015 site inspection and report.
 - c. The Facility site map contained in the SWPPP did not properly document existing structural control measures, locations where materials were exposed to precipitation, and type of discharges.
 - d. The Facility SWPPP did not include a site map properly documenting the location of all storm water conveyances from the Facility.
 - e. The Facility SWPPP did not document the results of routine facility inspections. Only one inspection record was provided for review, and the SWPPP provided that the inspection frequency is daily and quarterly.
15. Based on the results of the July 6, 2016, inspection, the Board concludes that Virginia-Carolina has violated conditions Part I.A, Part I.B.6, Part II.F.1, Part II.G.3, Part II.H.2.a.(1), Part II.H.2.a.(2), Part II.H.3.d.(2), and Part II.H.3.d.(4) of the Permit as noted in paragraphs C(4) through C(14) of this Order.
16. TRO issued NOV No. W2016-09-T-0001 dated September 26, 2016 for the violations noted above.
17. Virginia-Carolina responded to the NOV by letter dated October 6, 2016 indicating that it had corrected the issues cited in the NOV. Virginia-Carolina stated that the pipe allowing unpermitted discharges had been removed, the SWPPP had been updated, all inspections had been completed with records available for review, and regrading, reseeding, and installing diversion dikes and check dams resolved erosion issues at the berm.
18. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances
19. The Regulation, at 9 VAC 25-190-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
20. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
21. The Department has issued coverage under no permits or certificates to Virginia-Carolina other than under VPDES Permit No. VAG84.
22. The unnamed tributary of Campbell Creek and Nansemond River are surface waters located wholly within the Commonwealth and each is a “state water” under State Water Control Law.
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23. Based on the results of the July 2016 inspection, the Board concludes that Virginia-Carolina has violated the Permit, as described in paragraph C(15), above.

24. Virginia-Carolina has submitted documentation that verifies that the violations as described in paragraphs C(4) through C(14), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Virginia-Carolina, and Virginia-Carolina agrees to pay a civil charge of \$7,622.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Virginia-Carolina shall include its Federal Employer Identification Number (FEIN) 30-0486294 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Virginia-Carolina shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Virginia-Carolina for good cause shown by Virginia-Carolina, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2016-09-T-0001 dated September 26, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Virginia-Carolina admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Virginia-Carolina consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Virginia-Carolina declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Virginia-Carolina to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Virginia-Carolina shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Virginia-Carolina shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Virginia-Carolina shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
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10. This Order shall become effective upon execution by both the Director or his designee and Virginia-Carolina. Nevertheless, Virginia-Carolina agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Virginia-Carolina has completed all of the requirements of the Order;
 - b. Virginia-Carolina petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Virginia-Carolina.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Virginia-Carolina from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Virginia-Carolina and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
 13. The undersigned representative of Virginia-Carolina certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Virginia-Carolina to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Virginia-Carolina.
 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
 15. By its signature below, Virginia-Carolina voluntarily agrees to the issuance of this Order.
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And it is so ORDERED this 23 day of March, 2017.


Craig R. Nicol, Regional Director
Department of Environmental Quality

VIRGINIA-CAROLINA FARM ASSOCIATES, L.C. voluntarily agrees to the issuance of this Order.

Date: Dec 30, 2016 By: Jeffrey C. Patton Manager
(Person) (Title)
VIRGINIA-CAROLINA FARM ASSOCIATES, L.C.

Commonwealth of Virginia
City/County of Suffolk

The foregoing document was signed and acknowledged before me this 30 day of December, 2016, by Jeffrey Patton who is Manager of VIRGINIA-CAROLINA FARM ASSOCIATES, L.C., on behalf of the limited liability company.

Jaime Scott
Notary Public
7388720
Registration No.

My commission expires: Dec 31, 2020

Notary seal:

